

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6946 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAFEGUARD SURGICALS

Versus

UNION OF INDIA

Appearance:

M/S TRIVEDI & GUPTA for Petitioners
MR JAYANT PATEL for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 22/09/98

ORAL JUDGEMENT

#. Rule. Mr.Jayant Patel, learned counsel appears for the respondents and waives service of rule. With consent of parties and in the facts and circumstance of the case, this matter is taken for final hearing today.

#. This petition is filed against the order passed by

the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT'), West Regional Branch at Mumbai dated 14th May, 1998 / 29th June, 1998. In the operative part of the order, it is stated that taking into account all the facts and circumstances of the case, the tribunal thought it appropriate to direct the applicant (present petitioner) to deposit an amount of Rs.10 lacs (Rupees Ten lacs) within two months from that date. It is further stated that on such deposit, there shall be waiver of pre deposit of balance of duty and penalty amount.

#. We issued notice on September 11, 1998 by making it returnable today. We have issued Rule and heard the learned counsel for the parties.

#. The learned counsel for the petitioner contended that full and complete interim relief ought to have been granted by CEGAT in view of the fact that by Notification dated 28th February, 1986 (Serial No.23), product of the petitioner is exempt from payment of excise. The tribunal has not considered the said aspect. It was further submitted that the point is also concluded by a decision of the High Court of Calcutta in TRIO MARKETING PRIVATE LIMITED VS. UNION OF INDIA, (1992) 57 ELT 249. Alternatively, it was urged that the petitioner is a Small Scale Unit and as per the notifications No.175/86 and 1/93, it was entitled to exemption from payment of excise duty.

#. Mr. Patel, learned counsel for the respondents on the other hand, submitted that all questions raised by the petitioner can be decided at the time of hearing of appeal. When appeal is pending before CEGAT and CEGAT has passed a discretionary order directing the petitioner to deposit an amount of Rs.10 lacs, ordinarily, in exercise of extraordinary jurisdiction under Article 226 of the Constitution, this Court will not interfere with the said order unless the Court feels that exercise of power by CEGAT is arbitrary, unreasonable or unlawful. According to submission of Mr. Patel, the order cannot be said arbitrary and unlawful and hence, no interference is called for.

#. So far as merits are concerned, in our opinion, the learned counsel for the respondents is right in submitting that the questions raised by the petitioner will be decided by CEGAT at the time of hearing of appeal. Looking to the financial condition of the petitioner, and all attendant circumstances though we are of the view that the order passed by CEGAT directing the petitioner

to deposit an amount of Rs.10 lacs which is discretionary in nature does not call for any interference, ends of justice would be met if the petitioner is directed to pay the said amount of Rs.10 lacs in three instalments as under :-

#. It is clarified that the appeal will be taken up for hearing by CEGAT only after the above amount is paid.

(1) Rs.3,00,000/- (Three lacs) to be paid on or before 31st October,1998

(2) Rs.3,00,000/- (Three lacs) to be paid on or before 30th November,1998; and

(3) Rs.4,00,000/- (Four lacs) to be paid on or before 31st January,1999;

#. It is also clarified that if the amount is not paid as per the above reschedule, the order passed by us will not operate.

#. The learned counsel for the appellant states that an amount of Rs.1.5 lacs is already paid. If it is so, it will be adjusted in the payment of first instalment. Rule is made absolute accordingly to the above extent. No order as to costs.

(C.K.Thakkar,J.)

Date : 22-9-1998 (A.M.Kapadia,J.)

(KPP)